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BEFORE THE ARIZONA CORPORATION COMMISSION

2009 APR -6 P 4: 53

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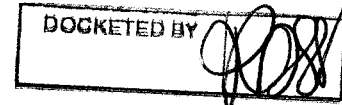
APR 6 2009

GARY PIERCE

Commissioner

PAUL NEWMAN

Commissioner



SANDRA D. KENNEDY

Commissioner

BOB STUMP

Commissioner

In the Matter of the Application of Level 3
Communications, LLC, Broadwing
Communications, LLC, and WilTel
Communications, LLC, for a Limited Waiver
of the Public Utility Holding Companies and
Affiliated Interests Rules (A.A.C. R14-2-801
et seq.) and Approval of Encumbrance of
Assets

Docket Nos:

T-03654A-09-0174

T-04176A-09-0174

T-03708A-09-0174

**APPLICATION FOR A
LIMITED WAIVER OF THE PUBLIC UTILITY HOLDING COMPANIES
AND AFFILIATED INTERESTS RULES (A.A.C. R14-2-801 et seq.) AND
APPROVAL OF ENCUMBRANCE OF ASSETS**

Level 3 Communications, LLC ("Level 3 LLC"), Broadwing Communications, LLC ("Broadwing"), and WilTel Communications, LLC ("WilTel") (collectively "Applicants"), pursuant to A.A.C. R14-2-806 and any other regulations deemed applicable, request a limited waiver of the Arizona Corporation Commission's ("Commission") Public Utility Holding Companies and Affiliated Interests Rules, A.A.C. R12-2-801 to R12-2-806 (the "Rules") and approval pursuant to A.R.S. § 40-285 to incur additional debt obligations of up to \$500 million and to secure the debt by liens on Applicants' assets.¹ To enable the Applicants to secure the full benefit of this additional

¹ Broadwing is not Class A utility subject to the Rules. As a result, Broadwing only seeks approval pursuant to A.R.S. § 40-285 in relation to the encumbrance of assets.

1 funding, Applicants respectfully request that the Commission grant its approval, as
2 necessary, for this borrowing no later than 60 days from the date of this filing.

3 Specifically, Level 3 Financing, Inc. ("Financing"), the immediate corporate parent
4 of Level 3 LLC, anticipates that the financing arrangement will involve additional long-
5 term loans under the accordion provision of the existing Credit Facility that was approved
6 by the Commission (hereinafter "2007 Financing").² Applicants will incur debt either as
7 co-borrowers or guarantors of Financing's debt and that debt will be secured by liens on
8 Applicants' assets and/or a pledge of the capital stock of Applicants held by their
9 respective immediate corporate parents. In addition, the proceeds from the incremental
10 borrowing under the Credit Agreement will be advanced to Level 3 LLC for an
11 intercompany demand note.

12 In support, Applicants state:

13 INTRODUCTION

14 Based on their operational revenues, Level 3 LLC and WilTel are considered Class
15 A utilities and, therefore, subject to the Rules. The Rules regulate the formation of public
16 utility holding companies and certain transactions and activities between public service
17 corporations and their affiliated interests. According to the Commission, the Rules are
18 intended to: (i) prevent the commingling of utility and non-utility funds; (ii) prohibit cross-
19 subsidization of non-utility activities by utility ratepayers; (iii) prevent negative impact of
20 non-utility activities on a utility's financial credit; and (iv) ensure that the utility and its
21 affiliates provide the Commission with the information necessary to "carry out its
22 regulatory responsibilities." *See* A.C.C. Decision No. 56618.

23
24 ² *See* Decision No. 69580 issued in Docket Nos. T-03654A-07-0101, T-03708A-07-0101, T-
25 03779A-07-0101, T-04176A-07-101 on May 21, 2007. The 2007 Financing documents incorporated an
26 "accordion" provision that enables Financing to obtain additional debt funding as its operating income
grows. Under the approved agreement, Financing is able to borrow the greater of \$1.4 billion or the dollar
amount that results from an approximation of the operating income of the business as defined in the Credit
Facility being multiplied by 1.5.

1 Applicants respectfully submit that, in light of the Rules' stated purposes,
2 Applicants should be exempt from the requirements of the Rules for the purposes of the
3 financing arrangement described herein. As explained below, Applicants operate in a
4 highly competitive environment that effectively protects customers from activities that will
5 detrimentally affect service to customers. As a result, a limited waiver of these Rules is in
6 the public interest. Therefore, Applicants request a limited waiver of the Rules as they
7 may apply to the financing arrangement described below.

8 **DESCRIPTION OF APPLICANTS**

9 **A. Level 3 Communications, LLC**

10 Level 3 LLC is a Delaware limited liability company and is a wholly owned
11 subsidiary of Financing, which, in turn, is a wholly owned subsidiary of Level 3
12 Communications, Inc. ("Parent"). All three have principal offices located at 1025
13 Eldorado Boulevard, Broomfield, CO 80021. Level 3 LLC provides high-quality voice
14 and data services to carriers, ISPs, and other business customers over its IP-based network.
15 Level 3 LLC is a non-dominant carrier authorized to provide resold and/or facilities-based
16 telecommunications services nationwide pursuant to certification, registration or tariff
17 requirements, or on a deregulated basis. Level 3 LLC is also authorized by the Federal
18 Communications Commission to provide international and domestic interstate services as
19 a non-dominant carrier.

20 In Arizona, Level 3 is authorized to provide facilities-based and resold local
21 exchange, toll and access services pursuant to a certificate granted in Decision No. 61737
22 issued by the Commission in Docket No. T-03654A-98-0641 on June 4, 1999.

23 **B. Broadwing Communications, LLC**

24 Broadwing, a subsidiary of Level 3 LLC, is a telecommunications provider that is
25 authorized to provide telecommunications service in forty-nine states and the District of
26 Columbia; Broadwing is authorized to provide local exchange telecommunications

1 services in 19 states and the District of Columbia. Broadwing is also authorized to provide
2 interstate and international telecommunications services pursuant to Section 214
3 authorization granted by the Federal Communications Commission. In Arizona,
4 Broadwing is authorized to provide resold and facilities-based intrastate interexchange
5 telecommunications services pursuant to Docket No. T-04176A-03-0185 granted by the
6 Commission on July 25, 2003.

7 **C. WilTel Communications, LLC**

8 WilTel operates and manages a technologically advanced, fully operational, next-
9 generation fiber-optic broadband network that spans approximately 30,000 route-miles
10 connection 118 cities in the United States and extends to Europe, Mexico and the Pacific
11 Rim. In Arizona, WilTel is authorized to provide resold and facilities-based competitive
12 local exchange and interexchange services pursuant to a certificate granted by the
13 Commission in Decision No. 62025 issued in Docket No. T-03708A-99-0074 on
14 November 2, 1999.

15 **CONTACT INFORMATION**

16 Inquiries or copies of any correspondence, orders, or other materials pertaining to
17 this Application should be directed to:

18
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DESCRIPTION OF THE TRANSACTION

Applicants request Commission approval to participate in a financing arrangement whereby Applicants will incur additional debt obligations of up to 1.5 times the approximate operating income of Financing and its subsidiaries. Based on that formula, the Applicants will raise an additional \$220 million.³ In addition to the immediate request to raise \$220 million, the Applicants seek approval to engage in further borrowing up to an additional \$280 million as allowed by the provisions of the 2007 Financing for a total of an additional \$500 million. The financing arrangement will involve long-term loans under the accordion provision of the existing Credit Facility that was approved by the Commission. The accordion provision allows Financing to increase the amount of debt based on a modified version of the company's earnings before interest, taxes, depreciation, and amortization (EBITDA). Parent and its subsidiaries, including Applicants, on a consolidated basis were free cash flow positive for the fourth quarter 2008 and expect to be free cash flow positive for all of 2009. It is as a result of Financing's and Applicants' improving financing performance through the fourth quarter 2008 that Financing is able to

³ Financing anticipates that it will receive approximately \$215 million, after fees, expenses and discounts, as proceeds from the immediate \$220 million borrowing.

1 seek additional debt funding under the 2007 Financing. Applicants will incur this debt
2 either as co-borrowers or guarantors of Financing's debt.⁴

3 Consistent with the terms of the approved 2007 Financing, Applicants will grant a
4 security interest in their assets and their capital stock or membership interests will be
5 pledged. Applicants emphasize that all the jurisdictional assets, capital stock and/or
6 membership interests were pledged in the 2007 Financing. No new jurisdictional assets
7 are pledged. Arizona jurisdictional assets will not be encumbered as collateral with
8 respect to the incremental borrowing until state regulatory approval is received. The funds
9 from the loan may be used for working capital and for other general corporate purposes,
10 including debt repurchases. In addition, the proceeds from the increased borrowing under
11 the Credit Agreement will be advanced to Level 3 LLC in exchange for an intercompany
12 demand note. Customer deposits and prepayments will not be encumbered as part of this
13 transaction.

14 Applicants' support for Financing's exercise of the accordion provision of the 2007
15 Financing arrangements will not result in a change in Applicants' management or in its
16 day-to-day operations; nor will it adversely affect Applicants' operations in Arizona. The
17 financing arrangement will enable Applicants to bring services to new markets and allow
18 more consumers to benefit from its competitive services more quickly and efficiently.
19 Accordingly, and to the extent required, Applicants request that the Commission approve
20 the participation of Applicants in the financial arrangement described herein.

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26 ⁴ To the extent that the Applicants serve as borrowers under the financing arrangement, they are exempt
from the provisions of A.R.S. § 40-301 *et seq.* pursuant to the provisions of A.R.S. § 40-301.D. The same
is true for the intercompany demand note described above.

BASIS FOR LIMITED WAIVER

A. The Proposed Transaction Will Not Directly or Indirectly Result in or Cause an Increase in Applicants' Maximum Rates on File with the Commission for Any Competitive Service.

The Commission previously has granted partial waivers of the Rules. *See, e.g.*, Decision No. 64737. In granting such waivers, the Commission determined that only when a transaction “could directly or indirectly result in or cause an increase in its maximum rate on file with the Commission for any competitive service” would a company have to make the necessary filings under A.A.C. R14-2-803, R14-2-804(A), (B), and (C), and R14-2-805. Applicants request that the Commission employ a consistent analysis to its request for a limited waiver of the Rules for Applicants’ participation in the financing arrangement.

Level 3 LLC primarily provides competitive wholesale services to other carriers, VoIP providers, and Internet Service Providers. The market for such services is highly competitive and prices are set by competition. With every product pricing change initiated by Level 3 LLC, competitors inevitably introduce new services or re-price their service in a manner believed to be even more attractive to the consumer. Accordingly, neither Level 3 LLC nor its subsidiaries have incentive or ability to charge unduly high or above-market prices that could be used to fund or subsidize unregulated affiliates or to commingle utility and non-utility funds in a manner that is harmful to Arizona consumers.

In addition, immediately following Applicants’ participation in the financing arrangement, Applicants will continue to offer the services they offer with no change in the rates or terms and conditions of service. Applicants do not anticipate that the financing arrangement will cause it to increase its maximum rates on file with the Commission for their competitive services.

1 B. Applicants' Participation in the Financing Arrangement is in the Public
2 Interest

3 The proposed financing arrangement described herein is consistent with the public
4 interest and will not impair the ability of Applicants to perform services to the public. The
5 financing arrangement will be transparent to consumers and will not alter the rates, terms
6 and conditions under which Applicants provides service in Arizona. Also, the financing
7 arrangement will not cause a change in the control of Applicants.

8 Approval of Applicants' participation in the proposed financing arrangement will
9 serve the public interest in promoting competition among telecommunications carriers by
10 providing Applicants with the opportunity to strengthen their financial position.
11 Applicants believe that the financial arrangement described herein provide important
12 financial benefits to the companies by improving and expanding the terms of credit under
13 which the companies operate. Furthermore, by allowing for a potential increase in the
14 breadth and scope of telecommunications services made available through the Applicants'
15 ongoing operations, this financing transaction will ultimately benefit Arizona consumers.
16 In sum, greater access to capital strengthens Applicants' ability to bring competitive
17 telecommunications services to consumers in the State of Arizona and is, therefore, in the
18 public interest.

19 **RELIEF REQUESTED**

20 Applicants respectfully request the following:

21 1. Waiver of the requirement under A.A.C. R14-2-804(B) that Applicants
22 obtain Commission approval, to the extent necessary, prior to entering into the financing
23 arrangement described herein. In the alternative and pursuant to A.A.C. R14-2-804(B),
24 Applicants request approval to guarantee the Credit Agreement.

25 2. Waiver of any other applicable requirements of the Rules as they may apply
26 to the transaction described herein.

3. Approval of the encumbrance of assets described in this Application pursuant to A.R.S. § 40-285.

4. Any other approvals deemed necessary for the transactions described in this Application.

CONCLUSION

For the foregoing reasons, Applicants respectfully request that the Commission grant a limited waiver as set forth above, or, in the alternative, approve Applicants' guarantee of the Credit Agreement. Applicants also request approval of the encumbrance of assets pursuant to A.R.S. § 40-285. Applicants further request that any condition that they file any of the loan documents be limited to a filing with Commission Staff and subject to an appropriate Protective Agreement.

RESPECTFULLY SUBMITTED this 6th day of April, 2009.

LEWIS AND ROCA LLP

Mal T Hall

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40 North Central Avenue
Phoenix, AZ 85004

Attorneys for Level 3 Communications, LLC,
Broadwing Communications, LLC, and WilTel
Communications, LLC

ORIGINAL and thirteen (13) copies
of the foregoing filed
this 6th day of April, 2009, with:

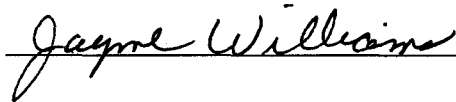
The Arizona Corporation Commission
Utilities Division – Docket Control
1200 W. Washington Street
Phoenix, Arizona 85007

Copy of the foregoing hand-delivered
this 6th day of April, 2009, to:

Maureen Scott
Legal Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

Ernest Johnson
Utilities Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

Lyn Farmer, Chief Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

A handwritten signature in cursive script, reading "Jayne Williams", is written over a horizontal line.

VERIFICATION

STATE OF COLORADO

§

COUNTY OF BROOMFIELD

§

§

I, William P. Hunt, state that I am Vice President Public Policy for Level 3 Communications, LLC; that I am authorized to make this Verification on behalf of Level 3 Communications, LLC and its subsidiaries; that the foregoing filing was prepared under my direction and supervision; and that the statements in the foregoing document are true and correct to the best of my knowledge, information, and belief.

Wm P. Hunt 3l

Name: William P. Hunt

Title: Vice President Public Policy
Level 3 Communications, LLC

SWORN TO AND SUBSCRIBED before me on the 2ND day of April, 2009.

Teresa Montoya
Notary Public

My commission expires: 10-11-2010

